

Conference Engrossed

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
First Regular Session  
2001

CHAPTER 338

**HOUSE BILL 2390**

AN ACT

AMENDING SECTION 35-902, ARIZONA REVISED STATUTES; AMENDING SECTION 35-902, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; AMENDING SECTION 35-904, ARIZONA REVISED STATUTES; AMENDING SECTION 35-904, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; AMENDING SECTION 35-905, ARIZONA REVISED STATUTES; AMENDING SECTION 35-905, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; RELATING TO PRIVATE ACTIVITY BONDING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 35-902, Arizona Revised Statutes, is amended to  
3 read:

4 35-902. Allocation

5 A. Subject to the provisions of this chapter, the total amount of the  
6 state ceiling is allocated among projects pursuant to this section. The  
7 director shall issue confirmations on a first come, first served basis,  
8 within any particular category of projects as described in subsection C, D,  
9 E, or F OR G of this section.

10 B. Fifteen TEN per cent of the state ceiling is allocated to projects  
11 that are designated at the sole discretion of the director.

12 C. Thirty-five per cent of the state ceiling is allocated to qualified  
13 mortgage revenue bonds and qualified mortgage credit certificate programs,  
14 excluding any such bonds and certificate programs for home improvement and  
15 rehabilitation.

16 D. TEN PER CENT OF THE STATE CEILING IS ALLOCATED TO QUALIFIED  
17 RESIDENTIAL RENTAL PROJECTS AS DESCRIBED IN THE UNITED STATES INTERNAL  
18 REVENUE CODE OF 1986, THIRTY PER CENT OF WHICH SHALL BE FOR RURAL RESIDENTIAL  
19 RENTAL PROJECTS FOR A PERIOD OF AT LEAST ONE HUNDRED EIGHTY DAYS.

20 ~~D.~~ E. Twenty per cent of the state ceiling is allocated to qualified  
21 student loan projects.

22 ~~E.~~ F. Fifteen per cent of the state ceiling is allocated to  
23 manufacturing projects.

24 ~~F.~~ G. Fifteen TEN per cent of the state ceiling is allocated to all  
25 projects financable through issuance of bonds that require an allocation of  
26 state ceiling and that are not described and provided for in subsections C,  
27 D, and E AND F of this section. Such projects include, but are not limited  
28 to, qualified mortgage revenue bonds and qualified mortgage credit  
29 certificate programs for home improvement and rehabilitation.

30 ~~G.~~ H. A request shall not be filed and a confirmation shall not be  
31 issued to a project unless the project is subject to section 146 of the  
32 code. No project is deemed to have been allocated any portion of the state  
33 ceiling unless, in connection with the project, the provisions of this  
34 chapter have been substantially complied with.

35 ~~H.~~ I. Any request on file with the department for which a  
36 confirmation has not been issued by 5:00 p.m. on June 30, other than a  
37 request for an allocation pursuant to subsection B of this section, is deemed  
38 to have expired at 5:00 p.m. on June 30. All or any part of any confirmation  
39 for which bonds have not been issued or for which a qualified mortgage credit  
40 certificate program has not been established by 5:00 p.m. on June 30,  
41 evidenced by the filing of a certificate of closing with the department, or  
42 for which confirmations have not been extended pursuant to section 35-910,  
43 is deemed to have expired.

44 ~~I.~~ J. At any given time, an issuer, or an issuer together with one  
45 or more other issuers, may not file with the department more than one  
46 request for each project. Nothing in this subsection prohibits an issuer

1 from refiling a request for a given project if a prior request has expired  
2 or filing a request for each separate and distinct project.

3 ~~J.~~ K. An issuer may not transfer or assign its rights to an  
4 allocation of state ceiling from one project to another project or from  
5 itself to another issuer.

6 Sec. 2. Section 35-902, Arizona Revised Statutes, as amended by  
7 section 1 of this act, is amended to read:

8 35-902. Allocation

9 A. Subject to the provisions of this chapter, the total amount of the  
10 state ceiling is allocated among projects pursuant to this section. The  
11 director shall issue confirmations on a first come, first served basis,  
12 within any particular category of projects as described in subsection C, D,  
13 ~~E, OR F or G~~ of this section.

14 B. ~~Ten~~ FIFTEEN per cent of the state ceiling is allocated to projects  
15 that are designated at the sole discretion of the director.

16 C. Thirty-five per cent of the state ceiling is allocated to qualified  
17 mortgage revenue bonds and qualified mortgage credit certificate programs,  
18 excluding any such bonds and certificate programs for home improvement and  
19 rehabilitation.

20 ~~D. Ten per cent of the state ceiling is allocated to qualified~~  
21 ~~residential rental projects as described in the united states internal~~  
22 ~~revenue code of 1986, thirty per cent of which shall be for rural residential~~  
23 ~~rental projects for a period of at least one hundred eighty days.~~

24 ~~E.~~ D. Twenty per cent of the state ceiling is allocated to qualified  
25 student loan projects.

26 ~~F.~~ E. Fifteen per cent of the state ceiling is allocated to  
27 manufacturing projects.

28 ~~G.~~ F. ~~Ten~~ FIFTEEN per cent of the state ceiling is allocated to all  
29 projects financable through issuance of bonds that require an allocation of  
30 state ceiling and that are not described and provided for in subsections C,  
31 ~~D, AND E and F~~ of this section. Such projects include, but are not limited  
32 to, qualified mortgage revenue bonds and qualified mortgage credit  
33 certificate programs for home improvement and rehabilitation.

34 ~~H.~~ G. A request shall not be filed and a confirmation shall not be  
35 issued to a project unless the project is subject to section 146 of the  
36 code. No project is deemed to have been allocated any portion of the state  
37 ceiling unless, in connection with the project, the provisions of this  
38 chapter have been substantially complied with.

39 ~~I.~~ H. Any request on file with the department for which a  
40 confirmation has not been issued by 5:00 p.m. on June 30, other than a  
41 request for an allocation pursuant to subsection B of this section, is deemed  
42 to have expired at 5:00 p.m. on June 30. All or any part of any confirmation  
43 for which bonds have not been issued or for which a qualified mortgage credit  
44 certificate program has not been established by 5:00 p.m. on June 30,  
45 evidenced by the filing of a certificate of closing with the department, or

1 for which confirmations have not been extended pursuant to section 35-910,  
2 is deemed to have expired.

3 ~~I.~~ I. At any given time, an issuer, or an issuer together with one  
4 or more other issuers, may not file with the department more than one  
5 request for each project. Nothing in this subsection prohibits an issuer  
6 from refiling a request for a given project if a prior request has expired  
7 or filing a request for each separate and distinct project.

8 ~~K.~~ J. An issuer may not transfer or assign its rights to an  
9 allocation of state ceiling from one project to another project or from  
10 itself to another issuer.

11 Sec. 3. Section 35-904, Arizona Revised Statutes, is amended to read:

12 35-904. Obtaining and issuing confirmations

13 A. Subject to section 35-905, a confirmation allocating a portion of  
14 the state ceiling to a project must be obtained before the sale or issuance  
15 of bonds or mortgage credit certificates by the issuer. A confirmation may  
16 be obtained by filing with the department a request and filing with the  
17 department evidence of an inducement resolution or other official action  
18 taken by the issuer in connection with the project. Requests filed by mail  
19 are deemed to be filed with the department at 5:00 p.m. on the day the  
20 request is actually received at the department. All requests received on the  
21 same date and at the same time shall be dated and numbered by lot and  
22 confirmations to those requests shall be issued in the order determined by  
23 lot.

24 B. On and after the first business day of each year, a request may be  
25 prepared and filed by the issuer or on behalf of the issuer by bond counsel  
26 or any other interested person.

27 C. Except as provided in section 35-902, subsection ~~H~~ I, section  
28 35-909 and subsection D of this section, a confirmation issued before 5:00  
29 p.m. on June 30 expires and no allocation is deemed to be made unless the  
30 applicable bonds have been issued or a qualified mortgage credit certificate  
31 program has been established and a certificate of closing has been actually  
32 filed, not merely postmarked, with the department no later than sixty days  
33 after the date of the confirmation or the first business day after the  
34 sixtieth day if the sixtieth day is not a business day. The confirmation may  
35 be extended as provided in section 35-910 beyond such sixty day period or  
36 5:00 p.m. on June 30.

37 D. Notwithstanding subsection C of this section, a confirmation issued  
38 for a project to be funded in part with an urban development action grant to  
39 be made under section 119 of the housing and community development act of  
40 1974 (P.L. 93-383; 88 Stat. 633) or a housing development grant to be made  
41 under section 301 of the housing and urban-renewal recovery act of 1983 (P.L.  
42 98-181, title III, section 301, 97 Stat. 1196 and amended October 17, 1984,  
43 P.L. 98-479, title III, section 103, 98 Stat. 2223) expires and no allocation  
44 is deemed to be made unless the applicable bonds have been issued and a  
45 certificate of closing and evidence satisfactory to the director of the  
46 commitment to make an urban development action grant or a housing development

1 grant with respect to such project have been actually filed, not merely  
2 postmarked, with the department no later than 5:00 p.m. on December 26.

3 E. Subject to the provisions of this section and section 35-909, the  
4 confirmation shall assure allocation in the manner prescribed by the code for  
5 a dollar amount of bonds or a qualified mortgage credit certificate program  
6 not in excess of the amount set forth in the confirmation.

7 F. The director shall decline to issue confirmations at such time as  
8 the aggregate amount of bonds or mortgage credit certificates allocated under  
9 all confirmations previously issued and not expired, together with the  
10 proposed issue of bonds or mortgage credit certificates as to which a request  
11 has been received, would, through 5:00 p.m. on June 30, exceed the respective  
12 aggregate amount allocated under section 35-902, subsection C, D, E, or F OR  
13 G for such purpose, and from July 1, exceed the aggregate amount of the state  
14 ceiling that is not allocated under an unexpired confirmation nor within the  
15 discretion of the director pursuant to section 35-902, subsection B. On  
16 expiration of a confirmation or release of an allocation, the director shall  
17 issue a confirmation to the next numbered request which is equal to or less  
18 than the then available portion of the state ceiling or to the next numbered  
19 request if the principal amount of such request is reduced to an amount equal  
20 to or less than the then available portion of the state ceiling available for  
21 such purpose. The director may only issue a single confirmation for each  
22 request.

23 G. A confirmation made pursuant to the director's discretion may be  
24 accompanied by a certificate executed by the director. The director, on  
25 request, shall execute a certificate stating that the confirmation was not  
26 made in consideration of any bribe, gift, gratuity or direct or indirect  
27 contribution to any political campaign. The director may require such oaths  
28 or affirmations as the director deems necessary to verify the accuracy of the  
29 certificate.

30 H. The director shall attempt to issue confirmations within three  
31 business days of receipt and shall issue confirmations in the order of  
32 receipt of fully and properly completed requests within the limitations of  
33 subsection F of this section. The department shall notify the issuer or  
34 other contact person listed in the request in writing, by telefacsimile or  
35 by telephone of the issuance of a confirmation. The department is not  
36 responsible for returning confirmations to the filing party. A confirmation  
37 shall be available for pickup at the department after issuance of the  
38 confirmation.

39 Sec. 4. Section 35-904, Arizona Revised Statutes, as amended by  
40 section 3 of this act, is amended to read:

41 35-904. Obtaining and issuing confirmations

42 A. Subject to section 35-905, a confirmation allocating a portion of  
43 the state ceiling to a project must be obtained before the sale or issuance  
44 of bonds or mortgage credit certificates by the issuer. A confirmation may  
45 be obtained by filing with the department a request and filing with the  
46 department evidence of an inducement resolution or other official action

1 taken by the issuer in connection with the project. Requests filed by mail  
2 are deemed to be filed with the department at 5:00 p.m. on the day the  
3 request is actually received at the department. All requests received on the  
4 same date and at the same time shall be dated and numbered by lot and  
5 confirmations to those requests shall be issued in the order determined by  
6 lot.

7 B. On and after the first business day of each year, a request may be  
8 prepared and filed by the issuer or on behalf of the issuer by bond counsel  
9 or any other interested person.

10 C. Except as provided in section 35-902, subsection ~~F~~ H, section  
11 35-909 and subsection D of this section, a confirmation issued before 5:00  
12 p.m. on June 30 expires and no allocation is deemed to be made unless the  
13 applicable bonds have been issued or a qualified mortgage credit certificate  
14 program has been established and a certificate of closing has been actually  
15 filed, not merely postmarked, with the department no later than sixty days  
16 after the date of the confirmation or the first business day after the  
17 sixtieth day if the sixtieth day is not a business day. The confirmation may  
18 be extended as provided in section 35-910 beyond such sixty day period or  
19 5:00 p.m. on June 30.

20 D. Notwithstanding subsection C of this section, a confirmation issued  
21 for a project to be funded in part with an urban development action grant to  
22 be made under section 119 of the housing and community development act of  
23 1974 (P.L. 93-383; 88 Stat. 633) or a housing development grant to be made  
24 under section 301 of the housing and urban-renewal recovery act of 1983 (P.L.  
25 98-181, title III, section 301, 97 Stat. 1196 and amended October 17, 1984,  
26 P.L. 98-479, title III, section 103, 98 Stat. 2223) expires and no allocation  
27 is deemed to be made unless the applicable bonds have been issued and a  
28 certificate of closing and evidence satisfactory to the director of the  
29 commitment to make an urban development action grant or a housing development  
30 grant with respect to such project have been actually filed, not merely  
31 postmarked, with the department no later than 5:00 p.m. on December 26.

32 E. Subject to the provisions of this section and section 35-909, the  
33 confirmation shall assure allocation in the manner prescribed by the code for  
34 a dollar amount of bonds or a qualified mortgage credit certificate program  
35 not in excess of the amount set forth in the confirmation.

36 F. The director shall decline to issue confirmations at such time as  
37 the aggregate amount of bonds or mortgage credit certificates allocated under  
38 all confirmations previously issued and not expired, together with the  
39 proposed issue of bonds or mortgage credit certificates as to which a request  
40 has been received, would, through 5:00 p.m. on June 30, exceed the respective  
41 aggregate amount allocated under section 35-902, subsection C, D, E, ~~OR F~~  
42 ~~OR G~~ for such purpose, and from July 1, exceed the aggregate amount of the  
43 state ceiling that is not allocated under an unexpired confirmation nor  
44 within the discretion of the director pursuant to section 35-902, subsection  
45 B. On expiration of a confirmation or release of an allocation, the director  
46 shall issue a confirmation to the next numbered request which is equal to or

1 less than the then available portion of the state ceiling or to the next  
2 numbered request if the principal amount of such request is reduced to an  
3 amount equal to or less than the then available portion of the state ceiling  
4 available for such purpose. The director may only issue a single  
5 confirmation for each request.

6 G. A confirmation made pursuant to the director's discretion may be  
7 accompanied by a certificate executed by the director. The director, on  
8 request, shall execute a certificate stating that the confirmation was not  
9 made in consideration of any bribe, gift, gratuity or direct or indirect  
10 contribution to any political campaign. The director may require such oaths  
11 or affirmations as the director deems necessary to verify the accuracy of the  
12 certificate.

13 H. The director shall attempt to issue confirmations within three  
14 business days of receipt and shall issue confirmations in the order of  
15 receipt of fully and properly completed requests within the limitations of  
16 subsection F of this section. The department shall notify the issuer or  
17 other contact person listed in the request in writing, by telefacsimile or  
18 by telephone of the issuance of a confirmation. The department is not  
19 responsible for returning confirmations to the filing party. A confirmation  
20 shall be available for pickup at the department after issuance of the  
21 confirmation.

22 Sec. 5. Section 35-905, Arizona Revised Statutes, is amended to read:

23 35-905. Restrictions on confirmations

24 A. Before April 1 of each year, seventy per cent of the allocation to  
25 manufacturing projects described in section 35-902, subsection E— F is  
26 reserved for manufacturing projects located in nonurban areas, and the  
27 remaining thirty per cent of the allocation to manufacturing projects  
28 described in section 35-902, subsection E— F shall be reserved for urban  
29 areas. Before July 1 of each year, seventy per cent of the allocation  
30 available for confirmation pursuant to the director's discretion as described  
31 in section 35-902, subsection B is reserved for projects located in nonurban  
32 areas, and the remaining thirty per cent of the allocation to the director's  
33 discretion as described in section 35-902, subsection B, shall be reserved  
34 for urban areas.

35 B. Before December 17, a confirmation shall not be allocated to a  
36 project in an amount greater than twenty million dollars, except that this  
37 subsection does not apply to any project that is eligible to receive an  
38 allocation pursuant to section 35-902, subsection B, C or D— E. For purposes  
39 of this subsection, the amount of allocation to a project shall also include  
40 any other state ceiling allocation received by any related person to the  
41 project. For purposes of this subsection "related person" has the same  
42 meaning as provided in section 147(a)(2) of the code, except that all  
43 references to fifty per cent shall be changed to twenty-five per cent.

1       Sec. 6. Section 35-905, Arizona Revised Statutes, as amended by  
2 section 5 of this act, is amended to read:

3       35-905. Restrictions on confirmations

4       A. Before April 1 of each year, seventy per cent of the allocation to  
5 manufacturing projects described in section 35-902, subsection F— E is  
6 reserved for manufacturing projects located in nonurban areas, and the  
7 remaining thirty per cent of the allocation to manufacturing projects  
8 described in section 35-902, subsection F— E shall be reserved for urban  
9 areas. Before July 1 of each year, seventy per cent of the allocation  
10 available for confirmation pursuant to the director's discretion as described  
11 in section 35-902, subsection B is reserved for projects located in nonurban  
12 areas, and the remaining thirty per cent of the allocation to the director's  
13 discretion as described in section 35-902, subsection B, shall be reserved  
14 for urban areas.

15       B. Before December 17, a confirmation shall not be allocated to a  
16 project in an amount greater than twenty million dollars, except that this  
17 subsection does not apply to any project that is eligible to receive an  
18 allocation pursuant to section 35-902, subsection B, C or E— D. For purposes  
19 of this subsection, the amount of allocation to a project shall also include  
20 any other state ceiling allocation received by any related person to the  
21 project. For purposes of this subsection "related person" has the same  
22 meaning as provided in section 147(a)(2) of the code, except that all  
23 references to fifty per cent shall be changed to twenty-five per cent.

24       Sec. 7. Study committee on industrial development bond  
25       allocations; report

26       A. The study committee on industrial development bond allocations is  
27 established consisting of the following members:

28       1. Four members of the house of representatives who are appointed by  
29 the speaker of the house of representatives, not more than two of whom are  
30 members of the same political party. One of these members shall be from a  
31 rural county with a population of not more than six hundred thousand persons.

32       2. Four members of the senate who are appointed by the president of  
33 the senate, not more than two of whom are members of the same political  
34 party. One of these members shall be from a rural county with a population  
35 of not more than six hundred thousand persons.

36       3. The director of the department of commerce or the director's  
37 designee.

38       4. Four members appointed by the president of the senate, three of  
39 whom are representatives from the Arizona housing commission and one  
40 representative for student loan projects.

41       5. Five members appointed by the speaker of the house of  
42 representatives, four of whom are representatives from a city or county  
43 industrial development authority and one representative for manufacturing  
44 projects. One of the members representing a city or county industrial  
45 development authority shall be from a rural county with a population of less  
46 than six hundred thousand persons.



1 B. The study committee shall:

2 1. Review the utilization of private activity bonds for the past five  
3 years including applications for and issuance of bonds.

4 2. Assess the projected demand for utilization of private activity  
5 bonds in future years and review the process by which prospective users of  
6 private activity bonds are selected including the current lottery process.

7 3. Evaluate and make recommendations for future allocations and  
8 methods for selecting private activity bond recipients.

9 4. On or before December 1, 2001, submit a written report to the  
10 governor, the president of the senate and the speaker of the house of  
11 representatives that includes the recommendations of the study  
12 committee. The study committee shall provide a copy of the report to the  
13 secretary of state and director of the Arizona state library, archives and  
14 public records.

15 C. Legislative staff, the department of commerce and the governor's  
16 agency on housing, if operational, shall provide services to the study  
17 committee as the study committee deems necessary. If the governor's agency  
18 on housing is not operational, the department of commerce division of housing  
19 and infrastructure development shall assist the study committee.

20 Sec. 8. Effective dates

21 A. Section 35-902, Arizona Revised Statutes, as amended by section 1  
22 of this act, section 35-904, Arizona Revised Statutes, as amended by section  
23 3 of this act and section 35-905, Arizona Revised Statutes, as amended by  
24 section 5 of this act are effective from and after December 31, 2001.

25 B. Section 35-902, Arizona Revised Statutes, as amended by section 2  
26 of this act, section 35-904, Arizona Revised Statutes, as amended by section  
27 4 of this act and section 35-905, Arizona Revised Statutes, as amended by  
28 section 6 of this act are effective from and after December 31, 2003.

29 Sec. 9. Delayed repeal

30 Section 7 of this act, relating to the study committee, is repealed on  
31 December 31, 2001.

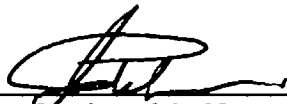
APPROVED BY THE GOVERNOR MAY 4, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2001.

Passed the House March 20, 2001,

by the following vote: 49 Ayes,

6 Nays, 5 Not Voting

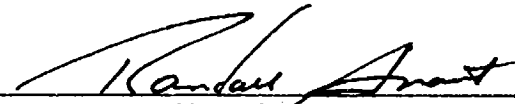
  
Speaker of the House

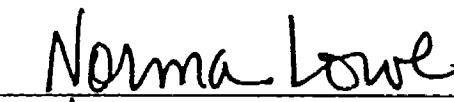
  
Chief Clerk of the House

Passed the Senate April 17, 2001,

by the following vote: 18 Ayes,

11 Nays, 1 Not Voting

  
President of the Senate

  
Asst. Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

H.B. 2390

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House April 26, 2001,

by the following vote: 41 Ayes,

1 Nays, 18 Not Voting

[Signature]  
Speaker of the House

Norman L. Joyce  
Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate April 27, 2001,

by the following vote: 16 Ayes,

12 Nays, 2 Not Voting

[Signature]  
President of the Senate

Chambers Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 30 day of April, 2001,

at 11:09 o'clock A M.

[Signature]  
Secretary to the Governor

Approved this 4th day of

May, 2001,

at 10:28 o'clock A M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4 day of May, 2001,

at 4:34 o'clock P M.

[Signature]  
Secretary of State

H.B. 2390